

Meeting Date: 01/27/09



AGENDA REPORT

City of Santa Clara, California

Agenda Item # 4C



DATE: January 22, 2009

TO: City Manager for Council Information

FROM: Director of Streets & Automotive Services

SUBJECT: Comments on Countywide Draft Model Ordinance Relating to the Regulation of Single-Use Carryout Bags

On December 10, 2008 the Recycling and Waste Reduction Commission (RWRC) of Santa Clara County forwarded a draft model ordinance relating to the regulation of single-use carryout bags to the Mayors, City Managers, and City Attorneys of Santa Clara County (see Attachments 1 and 2). The RWRC requested comments on the feasibility of implementing the draft model ordinance in each local jurisdiction from an administrative and legal perspective by January 30, 2009. The RWRC is not asking for policy decisions at this time.

The goals of the draft model ordinance are to reduce the amount of material going into landfills, and litter from our streets and waterways, associated with single-use carryout bags. Customers would be encouraged to bring a reusable bag to the store or choose not to use a bag. The draft model ordinance would require stores to charge a Bag Pollution Cleanup Fee of \$0.25 per bag (up to \$2.00 per transaction on both plastic and paper bags) to customers at the point of sale. Stores would retain \$0.05 per bag or \$0.10 per green carryout bag to help cover implementation costs. The rest of the fee would be remitted to cities to cover administrative, enforcement, litter abatement, and public education costs. The County of Santa Clara Weights and Measurements Division would likely be contracted to do the enforcement, if an ordinance is passed in the future.

The draft model ordinance has been reviewed by the City Attorney, and has been forwarded by the City Manager to the Planning Department and Street Department for comments. In addition, a copy of the draft model ordinance was forwarded to the Santa Clara Chamber of Commerce for review and comment. The Chamber of Commerce submitted a letter urging the City Council to oppose an ordinance on single-use carryout bags. The letter, dated January 15, 2009, will be forwarded to the RWRC (see Attachment 3).

The California Retailers Association (CRA) has submitted written comments that oppose the draft model ordinance to the RWRC. The City of Saratoga recently passed a resolution that supports the Santa Clara County Cities Association efforts to promote a regional approach to eliminating the use of disposable, single-use carryout bags. (See Attachments 4 and 5).

In an analysis of the draft model ordinance by the City Attorney's Office, the Bag Pollution Cleanup Fee appears to be inconsistent with AB 2449, which took effect on July 1, 2007. AB 2449 requires grocery stores and retail pharmacies greater than 10,000 square feet to establish an in-store plastic bag recycling program at no charge to the public and make reusable bags made from cloth, fabric, or plastic with a thickness of 2.25 mils or greater available to customers for purchase. The bill also specifically prohibits local governments from imposing a fee on plastic carryout bags. Attempts to preempt AB 2449 could invite legal challenges. Staff's previous comments encouraged consistency with regional and state laws.

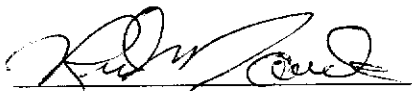
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Page 2

California State Assembly Member Brownley introduced AB 68 on December 12, 2008 and Assembly Member Davis introduced AB 87 on January 5, 2009 into the legislature. Both proposed bills are very similar to the language set forth in the Santa Clara County proposed model ordinance. Both bills only address stores that meet the definition of a supermarket, or have over 10,000 square feet of retail space and has a pharmacy, or is a convenience food store. The countywide model ordinance does not exempt stores under 10,000 square feet. Copies of AB 68 (Brownley) and AB 87 (Davis) have been placed in Council Offices for review.

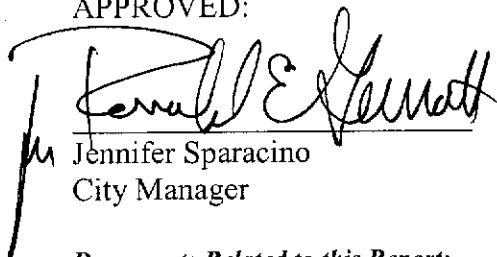
Street Department staff has been involved with the development of the draft model ordinance since the RWRC tasked its Technical Advisory Committee with this assignment in August of 2008. Staff comments that will be forwarded to RWRC include 1) concern regarding inconsistencies with AB2449, 2) CEQA review requirement, 3) concern regarding enforcement costs to City; needs clarification, 4) its only comment on the draft model ordinance is that the exempted carryout bag definition should be expanded to include small carryout bags issued at internal points of sale, specifically pharmacies, and 5) importance of regional consistencies per City of Saratoga resolution. A CEQA review may need to occur prior to implementing an ordinance that regulates single-use carryout bags. The City of San Jose and City of Palo Alto will likely have models that can be used by Planning Staff, if necessary.

These comments will be forwarded to the RWRC and will be taken into consideration when compiling the model ordinance regulating single-use carryout bags. The RWRC would like to take action on the final draft at its February 25, 2009 meeting. If approved, the RWRC has indicated that it will forward the model ordinance to jurisdictions, along with a request to approve it by April 24, 2009 (Earth Day).



Richard J. Mauck
Director of Streets & Automotive Services

APPROVED:



Jennifer Sparacino
City Manager

Documents Related to this Report:

Attachment 1
Attachment 2
Attachment 3
Attachment 4
Attachment 5
AB68 and AB 87 in Council Offices for review

County of Santa Clara

Recycling and Waste Reduction Commission
Integrated Waste Management Division

1553 Berger Drive, Building #1
San Jose, California 95112
(408) 282-3180 FAX (408) 282-3188
www.ReduceWaste.org



DATE: December 10, 2008

TO: Mayors, City Managers and City Attorneys of Santa Clara County

FROM: Jamie McLeod, Chair
Recycling and Waste Reduction Commission of Santa Clara County (RWRC)

RE: Draft Model Single-Use Carryout Bag Ordinance

In response to the growing public concern over the environmental impacts and hidden costs of single use plastic bags, the RWRC has been considering a regional approach to address the issue.

Over the past year, the RWRC has received input from the Technical Advisory Committee (TAC) and multiple stakeholders on developing a draft model ordinance. At our December 10, 2008 meeting, the Source Reduction and Recycling Subcommittee of the TAC presented a draft model single-use carryout bag ordinance. The Commission heard public comment from 14 stakeholders, lobbyists and concerned residents. The comments were well-balanced on both sides of the issue. Approximately 60 people were present in the audience, including news media.

This correspondence is to request feedback on the feasibility of implementing the draft ordinance in your jurisdiction from an administrative and legal perspective. Your comments will be used to develop a final ordinance that will be provided for consideration by policy makers.

Attached is the draft model ordinance and supporting staff reports. The RWRC hopes to take action on the final draft at the February 25, 2009 meeting. To that end, we request that you kindly provide comments to your TAC representative by Friday, January 30, 2009, and that your TAC representative forward comments electronically to County staff upon receipt. Please consult your TAC representative if you need additional information (list attached).

We are specifically seeking feedback on aspects of the ordinance that address outreach, education, enforcement, litter abatement, administration, and level of CEQA review required. A commensurate fee can be determined after a program has been developed.

Comments will be formatted into a single document and forwarded to the RWRC as an addendum to the draft model ordinance. The RWRC will review and discuss the comments at the February 25th meeting prior to consideration of a formal recommendation on the ordinance. Each city would then need to act independently for the proposed ordinance to be adopted, though a uniform approach between jurisdictions will provide consistency for consumers and businesses. Thank you for your attention to this matter.

Commissioners: Jamie McLeod, Chair; Ronit Bryant, Kansen Chu, Peter Drekmeier, Patrick Kwok, Cat Tucker, Kris Wang, Ken Yeager

ATTACHMENT 1

[jurisdiction-specific header here; remainder to be formatted and renumbered as needed]

MODEL COUNTYWIDE ORDINANCE FOR JURISDICTIONS IN SANTA CLARA COUNTY RELATING TO REGULATION OF SINGLE-USE CARRYOUT BAGS

SECTION 1. Findings:

- (a) Single-use carryout bags provided by stores impose hidden costs on consumers, local governments, the state, taxpayers, and the environment.
- (b) Requiring stores to end the subsidy of single-use carryout bags and charge their full economic and environmental costs will provide consumers with an appropriate market signal to make informed decisions regarding carryout bag reduction and reuse options.
- (c) Requiring stores to charge and remit a customer-based fee for the distribution of single-use carryout bags will help the state and local governments to offset the environmental and social costs of single-use carryout bags.
- (d) The amount and nature of the customer-based fee have a fair and reasonable relationship to the environmental, public health, and societal burdens imposed by the use of single-use carryout bags, and there is a sufficient nexus between the fees imposed and the use of those fees to support programs to prevent the litter of single-use carryout bags, cleaning up the litter caused by single-use carryout bags, and encouraging the reduction of the use of single-use carryout bags.
- (e) [other findings related to the Problem Statement as approved by the Commission at their 10/22/08 meeting, all as determined to be useful by County Counsel or City Attorneys]

SECTION 2. Division X of Title Y of the [jurisdiction's county or municipal] Code is amended by adding a new Chapter Z to be numbered and entitled and to read as follows:

CHAPTER Z. SINGLE-USE CARRYOUT BAGS

1. Definitions. For purposes of this chapter, the following definitions shall apply:

(a) Bag Pollution Cleanup Fee

"Bag Pollution Cleanup Fee" means the fee imposed pursuant to Section 2.

(b) Commission

"Commission" means the Recycling and Waste Reduction Commission of Santa Clara County.

(c) Fund

"Fund" means the Bag Pollution Cleanup Fund, established pursuant to subdivision (a) of Section 5.

(d) Green carryout bag

(1) "Green carryout bag" means a single-use carryout bag that is provided by a store to a customer at the point of sale and meets all of the following requirements:

- (A) Is composed of at least 40 percent post-consumer recycled content material.
- (B) Is accepted in 80% of curbside recycling programs in Santa Clara County.
- (C) Is capable of composting within 180 days, as determined by the Commission [or the City/Town/County Manager/Administrator/Director of Finance].

(2) "Green carryout bag" does not include a reusable bag, as defined in this section.

(e) Reusable bag

"Reusable bag" means either of the following:

- (1) A bag made of cloth or other machine washable fabric that has handles.
- (2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse..

(f) Single-use carryout bag

"Single-use carryout bag" means a single-use carryout bag that is provided by a store to a customer at the point of sale and that is not a reusable bag, as defined in this section. For the purposes of this chapter, "single-use carryout bag" does not include plastic or paper bags that are used by customers or the store to protect or contain meat, fresh produce, food prepared or packaged at the establishment, or other goods that must be protected from moisture, damage, or contamination, and that are placed in a single-use carryout bag at the point of sale.

(g) [Administrator]

"[Administrator]" means the [designated official] of [jurisdiction].

(h) Store

"Store" means a retail establishment that provides single-use carryout bags (including green carryout bags) to its customers as a result of the sale of a product. The following are excluded from the definition of "store": restaurants, take-out food establishments, or any other businesses that receive 90% or more of their revenue from the sale of food prepared or packaged at the establishment.

2. Bag Pollution Cleanup Fee

(a) (1) Except as provided in Section 3, on and after October 1, 2009, a store shall not provide a single-use carryout bag, including a green carryout bag, to a customer at the point of sale, unless the store charges and collects from the customer the Bag Pollution Cleanup Fee of twenty-five cents (\$0.25) per bag.

(2) Before January 1, 2014, the total amount charged to a customer pursuant to paragraph (1) shall not exceed two dollars (\$2.00) per transaction and on and after January 1, 2014, this restriction shall not apply.

(b) The amount charged pursuant to paragraph (1) of subdivision (a) shall be separately stated on the receipt provided to the customer at the time of sale, and shall be identified as the Bag Pollution Cleanup Fee.

(c) (1) A store charging a fee pursuant to subdivision (a) may retain a portion of the fee, as specified in paragraph (2), in an amount necessary to reimburse the store's costs associated with complying with this chapter, in accordance with Section 4.5. The store shall remit the remainder of the fee to the [jurisdiction].

(2) A store may retain not more than five cents (\$0.05) of the fee for each single-use carryout bag that is not a green carryout bag. For a single-use carryout bag that is a green carryout bag, a store may retain not more than ten cents (\$0.10) of the fee for each bag.

(d) Any other transaction fee charged by a store in relation to providing a single-use carryout bag shall be identified separately from the Bag Pollution Cleanup Fee.

3. Exemption of WIC and Food Stamp transactions

Before January 1, 2014, the fee imposed pursuant to Section 2 shall not be charged to either of the following for any transaction that is not combined with other purchases:

(a) A customer participating in the Special Supplemental Food Program for Women, Infants, and Children (Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code).

(b) A customer participating in the State Department of Social Services Food Stamp Program.

4. Remittance of fee

A store that collects the Bag Pollution Cleanup Fee pursuant to Section 2 shall calculate the amount of money collected and, after deducting the amount specified in subdivision (c) of

Section 2, shall, in accordance with Section 6, remit the remainder to the [jurisdiction] for deposit into the fund.

5. Store use of retained portion of fee

A store charging a fee pursuant to Section 2 shall use the amount of the fee retained pursuant to subdivision (c) of Section 2 for all of the following:

- (a) Reimbursement of the store's costs associated with the collection and remittance of the fee pursuant to Sections 2 and 4.
- (b) The development of in-store educational materials encouraging the use of reusable bags for distribution to customers.
- (c) The development and implementation of an educational campaign encouraging the use of reusable bags, including, but not limited to, public service announcements.
- (d) Reimbursement of the store's costs associated with providing reusable bags to customers participating in programs described in subdivisions (a) and (b) of Section 3.
- (e) Reimbursement of the store's costs associated with providing reusable bags as donations to community organizations, nonprofit organizations, and other similar entities.
- (f) Reimbursement of the store's costs associated with customers' choice to use green carryout bags.

6. Bag Pollution Cleanup Fund

(a) The Bag Pollution Cleanup Fund is hereby established. All fees collected pursuant to this chapter shall be deposited in the fund.

(b) The moneys in the fund shall be expended, upon appropriation in the manner and in the order of priority as follows:

- (1) to reimburse the [jurisdiction]'s costs of implementing Sections 7 through 10.
- (2) for purposes of programs that encourage and support recycling of single-use carryout bags and single-use carryout bag pollution prevention, cleanup, abatement, and outreach programs.

7. Administration of Single Use Carryout Bag Fee

- (a) The [Administrator] shall administer and collect the Bag Pollution Cleanup Fee
- (b) The [Administrator] may adopt rules and regulations to carry out this article, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.
- (c) The Bag Pollution Cleanup Fee shall be due and payable quarterly on or before the 25th day of the month following each calendar quarter. Payments shall be accompanied by a form, as prescribed by the [Administrator], including, but not limited to, electronic media.
- (d) The [Administrator] may require the payment of the fee for other than quarterly periods.

8. Administration and enforcement

Except as otherwise provided by this chapter, the [Administrator] or designee shall administer and enforce this chapter.

9. Enforcement

Enforcement of this chapter shall be by the County of Santa Clara Weights and Measures Division [and/or by jurisdiction's agencies to be named] in the following manner:

- (a) The Division of Weights and Measures will conduct an initial inspection of each store during the first year this chapter is operative. The inspection shall consist of a survey in which the store manager will demonstrate compliance with this chapter.

- (b) Noncompliance will result in a Notice of Violation and a re-inspection shall occur within 90 days. If the store is in compliance upon first re-inspection, the Notice of Violation will remain in effect for a period of no less than one (1) year and re-inspection may occur within 12 months.
- (c) Failure to comply after second re-inspection will result in a fine no less than \$100 for the first offense and a re-inspection shall occur within 90 days. Notice of Violation will remain in effect for a period of no less than two (2) years.
- (d) A second offense shall result in a fine no less than \$500; violations thereafter will result in a maximum of \$1,000 per violation.

10. Records

Stores shall retain their records for a minimum of three years from the date on which any fee or report based on such records is submitted as provided in Sections 4, 5, or 7. Records shall be available to County of Santa Clara Department of Agriculture Commissioner, Integrated Waste Management Program Manager, Weights and Measures Program Manager and/or their designees [and/or by jurisdiction's agencies to be named].

11. Operative Date

This chapter shall become operative on October 1, 2009.

[jurisdiction-specific approval format]



CHAMBER OF COMMERCE & CONVENTION-VISITORS BUREAU

RECEIVED
JAN 15 2009
Office of the City Manager
City of Santa Clara

January 15, 2009

Jennifer Sparacino
City Manager
City of Santa Clara
1500 Warburton Ave.
Santa Clara, CA 95050

Subject: Draft Model Ordinance for Jurisdictions in Santa Clara County for
the Regulation of Single-Use Carryout Bags

Dear Jennifer,

Thank you for your letter of January 6, 2009 requesting input from the Santa Clara Chamber of Commerce and Convention-Visitors Bureau on the Draft Model Ordinance Regulation of Single-Use Carryout Bags. The Chamber has been following this issue closely with the Executive Committee recommending this week that we oppose the ordinance for the following reasons:

- Where did the commission come up with the amount of \$0.25/bag (maximum of \$2.00 per purchase until January 1, 2014, after which this restriction will not apply)
- Will the recycling fee on waste services bills be decreased?
- This seems to be a case of being green for the sake of being green instead of creating a solution to the issue of plastic bags in the landfill and other areas.
- Concern raised over the issue of plastic bags that you buy in the store being of a heavier grade than the ones the stores provide (this was related to a study done in Ireland on a similar ordinance).
- Discussion held regarding how the tax will be collected-it is noted in the ordinance that an Administrator will collect and administer the fund, but no designated person/organization has been determined.
- Concerns expressed that this will not remove the bags from landfills as proposed.
- Discussion about how this will create a larger government-creating government jobs for the sake of government jobs.
- Concerns expressed that this will create a tremendous burden on businesses that have to monitor, collect, report and submit payment for the program.
- Discussion held regarding a poll the Silicon Valley/San Jose Business Journal ran asking about the bag tax (December 26, 2008 issue). The poll results were 75% against the tax, 20% in favor of it and 4% undecided (due to rounding, the number may not add up to 100% according to the SVSJB).
- Committee members and raised questions about how this will impact business and whether it will create an unfair business climate (between cities that adopt the ordinance and those that don't).
- Concern about this being a fee disguised as a tax-question raised about the legality-how are the costs offset by the fee? Is there a study that was done that can explain this?

ATTACHMENT 3

Page 2

Adding an additional tax/fee to businesses and consumers during the most economic challenging time since the Great Depression does not make sense. We strongly urge the Santa Clara City Council oppose this Draft Ordinance and to recommend the County focus on existing resources on expanding the state's current recycling law and exploring other such resources.

Sincerely,



Steve Van Dorn
President & CEO





December 5, 2008

Santa Clara County Recycling and Waste Reduction Commission
County Government Center
Tenth Floor - East Wing
70 West Hedding Street
San Jose, CA. 95110

RE: "Single Use Disposable Carry-out Bag" Proposed Ordinance

Dear Santa Clara County Recycling and Waste Reduction Commission:

The California Retailers Association must unfortunately oppose Santa Clara County's proposed ordinance regarding "Plastic and Paper Reduction", which is scheduled to be heard on Wednesday, December 10 at the Santa Clara County Recycling and Waste Reduction Commission meeting.

Although model language for the proposed ordinance has not yet been released, we have had an opportunity to review the October 15, 2008 memorandum to the Recycling and Waste Reduction Commission from the Chair of the Technical Advisory Committee and Recycling Committee. Based on issues outlined in that memorandum, our members would like to express their concerns for consideration by the Recycling and Waste Reduction Commission.

While our members are supportive of recycling efforts and are amenable to partnering with local governments to provide recycling education to our customers, we believe that some of the issues outlined regarding the proposed ordinance would unintentionally result in a negative economic impact on businesses and consumers in our struggling economy.

Our members oppose outright bans on any type of carryout bag. We believe that each customer should have the opportunity to choose which bag is right for their use, taking into account whether they intend to use the carryout bag just to transport their merchandise, reuse the bag later for another use, and how the customer will properly dispose of the carryout bag when its use and reuse is fulfilled.

Our members request that the Commission consider the considerably greater cost of providing single-use paper bags to consumers when they consider which types of bags will eventually be affected by the Santa Clara ordinance. Any ban of plastic carryout bags would force retailers to offer paper bags for single use carryout to those consumers who do not choose to use reusable bags. Paper bags are significantly more expensive than plastic bags. So retailers would have to pay an increased cost for supplying paper bags at the point of sale. Especially in the current economic climate, these additional costs cannot be borne completely by the retailer and those costs will regrettably have to be passed on to the consumer.

Our members generally oppose fees on carryout bags. However, if Santa Clara County is considering the levy of a fee on carryout bags, then the California Retailers Association requests that the County impose fees on both paper and plastic single-use carryout bags. Moreover, it is important that any fee on single-use bags be collected from the consumers who choose to use them. If the purpose of a proposed ordinance is to minimize the use of single-use carryout bags, then the consumer must be directly incentivized to use reusable bags or a lesser number of single-use bags. Further, our members request that any proposed fee include the following:

- Implemented with a phase-in period to allow retailers to set up appropriate systems;
- Notice of the fee on receipts or other means to provide transparency to consumers;
- Fee charged per bag, regardless of single-use bag type;
- Fee exempted from sales tax;
- Proceeds from fees shared between retailers, to reimburse retailers for the additional costs incurred to collect and remit the fee and assist with any educational component, and the County for the County's use to fund development and maintenance of related litter abatement programs and education and awareness programs; and
- A 5-year sunset date to allow for a re-evaluation of the program.

The California Retailers Association respectfully requests that Santa Clara County consider that the proposed ordinance has the potential to impose a significant burden on retailers and consumers. In our struggling economy, these costs will be even more significant in their negative impact. Our members urge Santa Clara County to consider these effects as they review the proposed ordinance on "Single Use Disposable Carry-out Bags."

The California Retailers Association is a trade association representing major California department stores, mass merchandisers, supermarkets, chain drug and convenience stores, as well as specialty retailers such as auto, book and home improvement stores. Our members have more than 9,000 stores in California and account for more than \$100 billion in sales annually.

Sincerely,



Heidi Barsuglia
Director, Government Affairs

cc: Santa Clara County Board of Supervisors

RESOLUTION NO. 08-070

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SARATOGA,
SUPPORTING THE EFFORTS OF THE SANTA CLARA COUNTY
CITIES ASSOCIATION IN PROMOTING A REGIONAL APPROACH
TO ELIMINATING THE USE OF
DISPOSABLE, SINGLE USE CARRY-OUT BAGS**

WHEREAS, disposable, single use carry-out bags are inexpensive and convenient, yet are also difficult to recycle, cause litter, contribute to pollution and can harm wildlife;

WHEREAS, recycling of these bags is possible, contamination, volatile overseas markets and low recovery rates make recycling less viable;

WHEREAS, a number of options exist for addressing the impacts of disposable, single use carry-out bags, including:

- Education and public outreach
- Banning their use
- Enhanced recycling
- Creating economic incentives to reduce or eliminate their use

WHEREAS, a number of jurisdictions in the San Francisco Bay Region are in the process of either banning, assessing fees, or recycling single use carryout bags;

WHEREAS, the Santa Clara County Cities Association (SCCCA) is promoting a regional approach on this issue, since it crosses jurisdictional boundaries. A regional approach would lead to greater consistency for customers and retailers and would also help to create a more united front should legal challenges occur.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Saratoga hereby supports the efforts of the Santa Clara County Cities Association in promoting a regional approach to eliminating the use of disposable, single use carry-out bags.

AYES: Councilmember Aileen Kao, Jill Hunter, Kathleen King, Vice Mayor Chuck Page,
Mayor Ann Waltonsmith

NOES:

ABSENT:

ABSTAIN:

Ann Waltonsmith, Mayor

ATTEST:

Ann Sullivan, Acting City Clerk

ASSEMBLY BILL

No. 68

Introduced by Assembly Member Brownley

December 12, 2008

An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 68, as introduced, Brownley. Solid waste: single-use carryout bags.

Existing law requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. Existing law imposes various requirements on at-store recycling programs, including requiring a store to maintain records describing the collection, transport, and recycling of plastic carryout bags collected by the store.

Under existing law, the California Integrated Waste Management Board (board) administers laws related to waste management. Existing law establishes in the Natural Resources Agency (agency) the Department of Conservation, which, among other things, administers laws related to beverage container recycling.

This bill would, on and after July 1, 2011, prohibit a store, as defined, from providing a single-use carryout bag to a customer unless the store charges a fee of not less than \$0.25 per bag at the point of sale. The bill would exempt certain customers from paying the fee. The bill would establish the Bag Pollution Fund in the State Treasury and would require a store to remit the single-use carryout bag fees, less a specified amount, to the State Board of Equalization for deposit in that fund.

The bill would require the agency and the board to administer and enforce the single-use carryout bag provisions and would require the State Board of Equalization to administer the collection of the fees imposed on those bags.

The moneys in the fund would be required to be expended, upon appropriation by the Legislature, in a specified order of priority, by the board for grants to cities and counties for programs related to single-use carryout bags and reusable bag giveaway programs, by the State Board of Equalization to reimburse its costs associated with collecting the fees, by the agency and board for purposes of implementing the above provisions, and by the board, in consultation with specified state agencies, to develop and implement specified programs related to single-use carryout bags.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Single-use carryout bags provided by stores impose hidden
- 4 costs on consumers, local governments, the state, taxpayers, and
- 5 the environment.
- 6 (b) Litter from plastic carryout bags poses a significant burden
- 7 to California's economy and a serious threat to our marine
- 8 ecosystem. It is estimated that Californians consume 19 billion
- 9 plastic carryout bags per year. However, according to the California
- 10 Integrated Waste Management Board, the recycling rate for these
- 11 bags is less than five percent and it currently costs the state
- 12 twenty-five million dollars (\$25,000,000) annually to landfill
- 13 discarded plastic bags. Public agencies in California also spend
- 14 more than three hundred million dollars (\$300,000,000) annually
- 15 in litter cleanup.
- 16 (c) Despite past efforts to control ocean litter, the quantity of
- 17 trash in the coastal and ocean environment is increasing
- 18 dramatically worldwide. It is estimated that 60 to 80 percent of all
- 19 marine debris, and 90 percent of floating debris is plastic. It may
- 20 take hundreds of years for this plastic to break down and some
- 21 plastics never truly biodegrade in the marine environment. Streams
- 22 and storm drains carry plastic bags to the ocean where they are

1 frequently mistaken as food by marine life. Over 267 species
2 worldwide have been impacted by plastic litter such as plastic bags
3 through entanglement or ingestion.

4 (d) Requiring stores to end the subsidy of single-use carryout
5 bags and charge their full economic and environmental costs will
6 provide consumers with an appropriate market signal to make
7 informed decisions regarding carryout bag reduction and reuse
8 options.

9 (e) Requiring stores to charge and remit a fee for the distribution
10 of single-use carryout bags will help the state and local
11 governments to offset the environmental and social costs of
12 single-use carryout bags.

13 (f) There is a need for a long-term shift away from litter control
14 and waste management and towards pollution prevention and
15 sustainable materials in the development of consumer products.

16 (g) Green chemistry, material science, and sustainable design
17 offer a new approach to solving environmental damage caused by
18 single-use carryout bags.

19 (h) The imposition of the fees pursuant to Section 42281 of the
20 Public Resources Code would not result in the imposition of a tax
21 within the meaning of Article XIII A of the California Constitution
22 because the amount and nature of the fee have a fair and reasonable
23 relationship to the environmental, public health, and societal
24 burdens imposed by the use of single-use carryout bags, and there
25 is a sufficient nexus between the fees imposed and the use of those
26 fees to support programs to prevent the litter of single-use carryout
27 bags, to clean up the litter caused by single-use carryout bags, and
28 to encourage the reduction of the use of single-use carryout bags.

29 (i) (1) There is a clear nexus between the type and amount of
30 the fees imposed pursuant to this act and the environmental, public
31 health, and societal costs resulting from single-use carryout bags.

32 (2) It is the intent of the Legislature that the fees that are
33 imposed pursuant to Section 42281 of the Public Resources Code
34 be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*
35 (1997) 15 Cal.4th 866.

36 SEC. 2. Chapter 5.3 (commencing with Section 42280) is added
37 to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

Article 1. Definitions

42280. For purposes of this chapter, the following definitions shall apply:

(a) "Agency" means the Natural Resources Agency.

(b) "Bag Pollution Cleanup Fee" means the fee imposed pursuant to Section 42281.

(c) "Board" means the California Integrated Waste Management Board.

(d) "Cal-EPA" means the California Environmental Protection Agency.

(e) "Fund" means the Bag Pollution Fund, established pursuant to subdivision (a) of Section 42285.

(f) (1) "Green carryout bag" means a single-use carryout bag that is provided by a store to a customer at the point of sale and meets all of the following requirements:

(A) Is composed of at least 40 percent post-consumer recycled content material.

(B) Is accepted in curbside recycling programs serving at least 80 percent of households in the state.

(C) Is capable of composting within 180 days, as determined by the board.

(2) "Green carryout bag" does not include a reusable bag.

(g) "Reusable bag" means a reusable bag that is made of cloth or other machine washable fabric that is specifically designed and manufactured for multiple reuse.

(h) "Single-use carryout bag" means a single-use carryout bag that is provided by a store to a customer at the point of sale and that is not a reusable bag and includes a "biodegradable" or "compostable" carryout bag meeting the requirements specified in Section 42357.

(i) "State board" means the State Board of Equalization.

(j) "Store" means a retail establishment that provides single-use carryout bags or green carryout bags to its customers as a result of the sale of a product and that meets any of the following requirements:

(1) Meets the definition of a "supermarket" in Section 14526.5.

1 (2) Has over 10,000 square feet of retail space that generates
2 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales
3 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
4 Division 2 of the Revenue and Taxation Code) and has a pharmacy
5 licensed pursuant to Chapter 9 (commencing with Section 4000)
6 of Division 2 of the Business and Professions Code.

7 (3) Is a convenience food store or foodmart primarily engaged
8 in retailing a limited line of goods that generally includes milk,
9 bread, soda, and snacks, and has a total combined square footage
10 of 10,000 square feet or more.

11
12 Article 2. Bag Pollution Cleanup Fee
13

14 42281. (a) Except as provided in Section 42283, on and after
15 July 1, 2010, a store shall not provide a single-use carryout bag,
16 including a green carryout bag, to a customer at the point of sale,
17 unless the store charges the customer not less than twenty-five
18 cents (\$0.25) per bag.

19 (b) The amount charged pursuant to paragraph (1) of subdivision
20 (a) shall not be subject to sales tax, shall be separately stated on
21 the receipt provided to the customer at the time of sale, and shall
22 be identified as the Bag Pollution Cleanup Fee.

23 (c) (1) A store charging a fee pursuant to subdivision (a) may
24 retain a portion of the fee, as specified in paragraph (2), in an
25 amount necessary to reimburse the store's costs associated with
26 complying with this chapter, in accordance with Section 42284.5.
27 The store shall remit the remainder of the fee to the state board
28 pursuant to Section 42284.

29 (2) (A) Before January 1, 2013, a store may retain not more
30 than five cents (\$0.05) of the fee for each single-use carryout bag
31 that is not a green carryout bag. For a single-use carryout bag that
32 is a green carryout bag, a store may retain not more than ten cents
33 (\$0.10) of the fee for each bag.

34 (B) On and after January 1, 2013, a store may retain an amount
35 established by the department, based on the department's
36 determination of the costs of complying with Section 42284.5.

37 (d) Any other transaction fee charged by a store in relation to
38 providing a single-use carryout bag shall be identified separately
39 from the Bag Pollution Cleanup Fee.

1 42283. The fee imposed pursuant to Section 42281 shall not
2 be charged to either of the following:

3 (a) A customer participating in the California Special
4 Supplemental Food Program for Women, Infants, and Children
5 (Article 2 (commencing with Section 123275) of Chapter 1 of Part
6 2 of Division 106 of the Health and Safety Code).

7 (b) A customer participating in the State Department of Social
8 Services Food Stamp Program.

9 42284. A store that collects the Bag Pollution Cleanup Fee
10 pursuant to Section 42281 shall calculate the amount of money
11 collected and, after deducting the amount specified in subdivision
12 (c) of Section 42281, shall, in accordance with Section 42288,
13 remit the remainder to the state board for deposit into the fund.

14 42284.5. A store charging a fee pursuant to Section 42281 shall
15 use the amount of the fee retained pursuant to subdivision (c) of
16 Section 42281 for all of the following:

17 (a) Reimbursement of the store's costs associated with the
18 collection and remittance of the fee pursuant to Sections 42281
19 and 42284.

20 (b) The development of in-store educational materials for
21 distribution to customers encouraging the use of reusable bags.

22 (c) The development and implementation of an educational
23 campaign encouraging the use of reusable bags, including, but not
24 limited to, public service announcements.

25 (d) Reimbursement of the store's costs associated with providing
26 reusable bags to customers participating in programs described in
27 subdivisions (a) and (b) of Section 42283.

28 (e) Reimbursement of the store's costs associated with providing
29 reusable bags as donations to community organizations, nonprofit
30 organizations, and other similar entities.

31 (f) Reimbursement of the store's costs associated with the use
32 of single-use carryout bags.

33 42285. (a) The Bag Pollution Fund is hereby established in
34 the State Treasury. All fees collected by the state board pursuant
35 to this chapter shall be deposited in the fund.

36 (b) The moneys in the fund shall be expended, upon
37 appropriation by the Legislature in the annual Budget Act, in the
38 manner and in the order of priority as follows:

1 (1) (A) By the board, 80 percent of the moneys in the fund, for
2 grants to cities and counties, on a per capita basis, for the following
3 purposes:

4 (i) Establishing and maintaining local programs to control
5 pollution from single-use carryout bags, including those programs
6 in partnership with nonprofit community-based organizations, for
7 purposes of litter cleanup activities.

8 (ii) Source reduction efforts to help implement zero waste
9 programs, litter prevention programs, and litter prevention
10 education and outreach programs related to single-use carryout
11 bags.

12 (iii) Mitigation projects relating to stormwater pollution caused
13 by single use carryout bag, including devices to prevent single-use
14 carryout bag litter from entering storm drain systems.

15 (iv) Reusable bag giveaway programs, including those targeting
16 low-income residents.

17 (B) Except as provided in subparagraph (C), the amount for
18 which a city or a county is eligible shall be based on the total
19 population of the incorporated area of the city or the total
20 unincorporated area of the county, whichever is applicable.

21 (C) If a city or county prohibits the use of all single-use carryout
22 bags, including green carryout bags, and no fees are collected
23 pursuant to Section 42281 within that jurisdiction, that city or
24 county shall not be eligible for grant funds pursuant to this
25 paragraph.

26 (2) No more than 5 percent of the funds shall be expended by
27 the state board, to reimburse the state board's costs of administering
28 Section 42288.

29 (3) No more than 5 percent shall be expended by the agency
30 and the board, for purposes of administering the requirements of
31 this chapter.

32 (4) The remainder of the moneys in the funds shall be allocated
33 on an equal basis to the agency, the board, and Cal-EPA for the
34 purposes of Section 42287 and 42287.1.

35 42286. (a) The Legislature finds and declares that imposing
36 a single-use carryout bag fee upon a store is a matter of statewide
37 interest and concern.

38 (b) Unless expressly authorized by this chapter, a city, county,
39 or other public agency shall not adopt, implement, or enforce an
40 ordinance, resolution, regulation, or rule to impose a single-use

1 carryout bag fee upon a store that is in compliance with this
2 chapter.

3 (c) This chapter does not preempt a city or county from
4 prohibiting the use, import, sale, or distribution of any plastic,
5 paper, or compostable carryout bag.

6
7 Article 3. Program and Report
8

9 42287. The board shall, in consultation with Cal-EPA, the State
10 Water Resources Control Board, and the Department of Toxic
11 Substances Control, develop and implement programs to encourage
12 and support pollution prevention, abatement and cleanup,
13 enforcement, green chemistry, water quality protection and cleanup,
14 and environmental and public education and outreach related to
15 the use of single-use carryout bags.

16 42287.1. On or before January 1, 2012, the board, in
17 consultation with Cal-EPA, shall submit a report to the Legislature
18 regarding the effectiveness of this chapter, the report shall also
19 include recommendations to further encourage the use of reusable
20 bags by consumers and retailers and to reduce the consumption of
21 single-use bags, including at a minimum, both of the following:

22 (a) Expanding the definition of stores that are subject to this
23 chapter to all other stores and retail establishments distributing
24 single-use bags, including the retail establishments specified in
25 subdivision (b) of Section 42251.

26 (b) Increasing the fee imposed pursuant to Section 42281 to
27 increase the effectiveness of this chapter.

28
29 Article 4. Administration and Enforcement
30

31 42288. (a) The state board shall administer and collect the Bag
32 Pollution Cleanup Fee pursuant to the Fee Collection Procedures
33 Law (Part 30 (commencing with Section 55001) of Division 2 of
34 the Revenue and Taxation Code).

35 (b) The state board may adopt rules and regulations to carry out
36 this article, including, but not limited to, provisions governing
37 collections, reporting, refunds, and appeals.

38 (c) The Bag Pollution Cleanup Fee shall be due and payable
39 quarterly on or before the 25th day of the month following each
40 calendar quarter. Payments shall be accompanied by a form, as

- 1 prescribed by the state board, including, but not limited to,
- 2 electronic media.
- 3 (d) The state board may require the payment of the fee for other
- 4 than quarterly periods.
- 5 42288.5. Except as otherwise provided by this chapter, the
- 6 agency and the board shall administer and enforce this chapter.

ASSEMBLY BILL

No. 87

Introduced by Assembly Member Davis

January 5, 2009

An act to amend Sections 42250, 42251, 42252, 42253, and 42254 of, to amend the heading of Chapter 5.1 (commencing with Section 42250) of Part 3 of Division 30 of, to add Sections 42252.5 and 42252.7 to, and to repeal and add Sections 42256 and 42257 of, the Public Resources Code, relating to single-use carryout bags.

LEGISLATIVE COUNSEL'S DIGEST

AB 87, as introduced, Davis. Single-use carryout bags: environmental effects: mitigation.

Existing law requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. Existing law imposes various requirements on at-store recycling programs, including requiring a store to maintain records describing the collection, transport, and recycling of plastic carryout bags collected by the store.

Existing law requires the manufacturer of plastic carryout bags to develop educational materials to encourage the reducing, reusing, and recycling of plastic bags and make those materials available to stores required to comply with the program.

This bill would prohibit, on and after July 1, 2010, a store, as defined, from providing a single-use carryout bag, including a green carryout bag, to a customer unless the store charges a fee of not less than \$0.25 per bag at the point of sale. The bill would exempt certain customers from paying the fee. The bill would establish the Bag Pollution Fund in the State Treasury and, by January 31, 2011, would require a store

that collects the single-use carryout bag fees to remit the fees, less a specified amount to be used as required, to the State Board of Equalization for deposit in that fund, and do so on a quarterly basis thereafter.

This bill would instead require the manufacturer of a single-use carryout bag to develop educational materials to encourage the reducing, reusing, and recycling of single-use bags and make those materials available to stores required to comply with the program.

The bill would require moneys in the fund, upon appropriation by the Legislature, to be expended by the board as specified, including, but not limited to, administrative costs, developing and implementing programs to encourage and support mitigating the environmental effects of single-use carryout bags, and payments to cities and counties for activities to reduce and prevent single-use carryout bag litter and the environmental impacts of single-use carryout bags.

The bill would require the board to administer and enforce the single-use carryout bag provisions and would require the State Board of Equalization to administer and collect the fees imposed on those bags. The bill would require to submit a biennial report to the Legislative the board, in coordination with other state agencies and stakeholders, on the effectiveness of the program and recommendations to further encourage the use of reusable bags.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Single-use carryout bags provided by stores impose hidden
- 4 costs on consumers, local governments, the state, taxpayers, and
- 5 the environment.
- 6 (b) Litter from plastic carryout bags poses a significant burden
- 7 to California's economy and a serious threat to the marine
- 8 ecosystem. It is estimated that Californians consume 19 billion
- 9 plastic carryout bags per year. However, according to the California
- 10 Integrated Waste Management Board, the recycling rate for these
- 11 bags is less than 5 percent. Public agencies in California also spend
- 12 more than three hundred seventy-five million dollars

1 (\$375,000,000) annually in litter cleanup, and plastic carryout bags
2 contribute disproportionately to the litter stream.

3 (c) Despite past efforts to control marine debris, the quantity of
4 trash in the coastal and ocean environment is increasing
5 dramatically worldwide. It is estimated that 60 to 80 percent of all
6 marine debris, and 90 percent of floating debris is plastic. It may
7 take hundreds of years for this plastic to break down and some
8 plastics never truly biodegrade in the marine environment. Streams
9 and storm drains carry plastic bags to the ocean where they are
10 frequently mistaken as food by marine life. Over 267 species
11 worldwide have been impacted by plastic litter such as plastic bags
12 through entanglement or ingestion.

13 (d) On February 8, 2007, the California Ocean Protection
14 Council adopted a comprehensive resolution on marine debris
15 calling for statewide action targeting the reduction of single-use
16 plastic packaging, including plastic carryout bags. The council
17 adopted an implementation strategy for this resolution, which in
18 part calls for instituting a statewide fee on single-use plastic grocery
19 bags, with the collected fees utilized to help fund litter abatement
20 and stormwater capture, and reduce the incidence of litter.

21 (e) Over 15 countries and over 40 U.S. states and cities have
22 either taken action or have proposed to take action on plastic
23 carryout bags in the form of bans or point-of-purchase fees.

24 (f) While paper bags are recyclable and degrade in the
25 environment, they are not an acceptable alternative to plastic since
26 the production and transport of paper bags leads to significantly
27 greater water pollution and air emissions, including greenhouse
28 gas emissions.

29 (g) Carryout bags marketed as “biodegradable” or
30 “compostable” are also not a viable alternative because these bags
31 have not proven to biodegrade in the marine environment, are only
32 able to biodegrade under specific conditions found in certain
33 industrial composting facilities that are not widely available
34 throughout the state, and will not reduce the litter problem since
35 they have the same characteristics as plastic bags.

36 (h) It is the intent of the Legislature to encourage the use of
37 reusable bags by consumers to reduce the consumption of
38 single-use bags, such as conventional plastic, paper, and
39 biodegradable or compostable plastic bags.

1 (i) The fees imposed pursuant to Section 42252.5 of the Public
2 Resources Code will mitigate the environmental, public health,
3 and other public-financed impacts caused by the use of single-use
4 bags by offsetting the costs of programs to prevent and reduce the
5 littering and environmental impacts of single-use carryout bags
6 and encouraging the reduction of the use of single-use carryout
7 bags.

8 (j) Requiring stores to end the subsidy of single-use carryout
9 bags and charge their full economic and environmental costs will
10 provide consumers with an appropriate market signal to make
11 informed decisions regarding carryout bag reduction and reuse
12 options.

13 (k) Requiring stores to charge and remit a fee for the distribution
14 of single-use carryout bags will help the state and local
15 governments to offset the environmental and social costs of
16 single-use carryout bags.

17 (l) The imposition of the fee pursuant to Section 42252.5 of the
18 Public Resources Code would not result in the imposition of a tax
19 within the meaning of Article XIII A of the California Constitution
20 because the amount and nature of the fee have a fair and reasonable
21 relationship to the environmental, public health, and societal
22 burdens imposed by the use of single-use carryout bags, and there
23 is a sufficient nexus between the fees imposed and the use of those
24 fees to support programs to prevent the litter of single-use carryout
25 bags, reduce the environmental impacts of single-use carryout
26 bags, and encourage the reduction of the use of single-use carryout
27 bags.

28 (m) (1) There is a clear nexus between the type and amount of
29 the fees imposed pursuant to this act and the environmental, public
30 health, and societal costs resulting from single-use carryout bags.

31 (2) It is the intent of the Legislature that the fees that are
32 imposed pursuant to Section 42252.5 of the Public Resources Code
33 be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*
34 (1997) 15 Cal.4th 866.

35 SEC. 2. The heading of Chapter 5.1 (commencing with Section
36 42250) of Part 3 of Division 30 of the Public Resources Code is
37 amended to read:

38
39 CHAPTER 5.1. ~~AT-STORE RECYCLING PROGRAM~~ SINGLE-USE
40 CARRYOUT BAGS

1 SEC. 3. Section 42250 of the Public Resources Code is
2 amended to read:

3 42250. For purposes of this chapter, the following definitions
4 shall apply:

5 (a) *"Biodegradable or compostable bag" means a carryout bag*
6 *provided by a store to a customer at the point of sale that is*
7 *certified and labeled as meeting the current American Society for*
8 *Testing and Materials (ASTM) Standard Specification pursuant*
9 *to Chapter 5.7 (commencing with Section 42355).*

10 (b) (1) *"Green carryout bag" means a single-use carryout bag*
11 *that is provided by a store to a customer at the point of sale and*
12 *meets all of the following requirements:*

13 (A) *Is composed of at least 40 percent post-consumer recycled*
14 *content material.*

15 (B) *Is accepted in curbside recycling programs serving at least*
16 *80 percent of households in the state.*

17 (C) *Is capable of composting within 180 days, as determined*
18 *by the board.*

19 (2) *"Green carryout bag" does not include a reusable bag.*

20 ~~(a)~~

21 (c) *"Manufacturer" means the producer of a plastic single-use*
22 *carryout bag sold to a store.*

23 ~~(b)~~

24 (d) *"Operator" means a person in control of, or having daily*
25 *responsibility for, the daily operation of a store, which may include,*
26 *but is not limited to, the owner of the store.*

27 (e) *"Paper carryout bag" means a paper carryout bag provided*
28 *by a store to a customer at the point of sale that is not a reusable*
29 *bag as defined in subdivision (g).*

30 ~~(e)~~

31 (f) *"Plastic carryout bag" means a plastic carryout bag provided*
32 *by a store to a customer at the point of sale that is not a reusable*
33 *bag as defined in subdivision (g).*

34 ~~(d)~~

35 (g) *"Reusable bag" means either of the following:*

36 (1) *A bag made of cloth or other machine washable fabric that*
37 *has handles.*

38 (2) *A durable plastic bag with handles that is at least 2.25 mils*
39 *thick and is specifically designed and manufactured for multiple*
40 *reuse.*

1 (h) "Single-use carryout bag" means a carryout bag provided
2 by the store to a customer at the point of sale that is not a reusable
3 bag as defined in subdivision (g), and includes biodegradable or
4 compostable bags.

5 (e)

6 (i) "Store" means a retail establishment that provides ~~plastic~~
7 single-use carryout bags to its customers as a result of the sale of
8 a product and that meets ~~either~~ any of the following requirements:

9 (1) ~~Meet~~ Meets the definition of a "supermarket" as found in
10 Section 14526.5.

11 (2) Has over 10,000 square feet of retail space that generates
12 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales
13 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
14 Division 2 of the Revenue and Taxation Code) and has a pharmacy
15 licensed pursuant to Chapter 9 (commencing with Section 4000)
16 of Division 2 of the Business and Professions Code.

17 (3) Is a chain of convenience food stores primarily engaged in
18 retailing a limited line of goods that includes milk, bread, soda,
19 and snacks, with a total combined square footage of 10,000 square
20 feet or more within the state.

21 SEC. 4. Section 42251 of the Public Resources Code is
22 amended to read:

23 42251. (a) The operator of a store that provides plastic
24 carryout bags to customers shall establish an at-store plastic
25 carryout bag recycling program pursuant to this chapter that
26 provides an opportunity for a customer of the store to return to the
27 store clean plastic carryout bags.

28 (b) A retail establishment that does not meet the definition of a
29 store, as specified in Section 42250, and that provides plastic
30 carryout bags to customers at the point of sale may also adopt an
31 at-store recycling program, as specified in this chapter.

32 SEC. 5. Section 42252 of the Public Resources Code is
33 amended to read:

34 42252. An at-store plastic carryout bag recycling program
35 provided by the operator of a store shall include all of the
36 following:

37 (a) A plastic carryout bag provided by the store shall have
38 printed or displayed on the bag, in a manner visible to a consumer,
39 the words "PLEASE RETURN TO A PARTICIPATING STORE
40 FOR RECYCLING."

1 (b) A plastic carryout bag collection bin shall be placed at each
2 store and shall be visible, easily accessible to the consumer, and
3 clearly marked that the collection bin is available for the purpose
4 of collecting and recycling plastic carryout bags.

5 (c) All plastic bags collected by the store shall be collected,
6 transported, and recycled in a manner that does not conflict with
7 the local jurisdiction's source reduction and recycling element,
8 pursuant to Chapter 2 (commencing with Section 41000) and
9 Chapter 3 (commencing with Section 41300) of Part 2.

10 (d) The store shall maintain records describing the collection,
11 transport, and recycling of plastic bags collected for a minimum
12 of three years and shall make the records available to the board or
13 the local jurisdiction, upon request, to demonstrate compliance
14 with this chapter.

15 (e) The operator of the ~~a~~ store shall make reusable bags available
16 to customers within the store, which may be purchased and used
17 in lieu of using a ~~plastic carryout bag or paper bag~~ *single-use*
18 *carryout bag*. This subdivision is not applicable to a retail
19 establishment specified pursuant to subdivision (b) of Section
20 42251.

21 SEC. 6. Section 42252.5 is added to the Public Resources Code,
22 to read:

23 42252.5. (a) Except as provided in subdivision (f), on and after
24 July 1, 2010, a store shall not provide a single-use carryout bag,
25 including a green carryout bag, to a customer at the point of sale,
26 unless the store charges the customer not less than twenty-five
27 cents (\$0.25) per bag.

28 (b) The amount charged pursuant to subdivision (a) shall not
29 be subject to sales tax, shall be separately stated on the receipt
30 provided to the customer at the time of sale, and shall be identified
31 as the Bag Pollution Cleanup Fee.

32 (c) (1) A store charging a fee pursuant to subdivision (a) may
33 retain a portion of the fee, as specified in subdivision (d). The store
34 shall remit the remainder of the fee to the State Board of
35 Equalization pursuant to Section 42252.7.

36 (2) A store shall coordinate with its host jurisdiction in
37 expending any revenue retained pursuant to this subdivision.

38 (3) A store shall not retain more than five cents (\$0.05) of the
39 fee for each single-use carryout bag that is not a green carryout
40 bag. For a single-use carryout bag that is a green carryout bag, a

1 store shall not retain more than seven cents (\$0.07) of the fee for
2 each bag.

3 (d) A store charging a fee pursuant to this section shall use the
4 amount of the fee retained pursuant to subdivision (c) for all of
5 the following:

6 (1) Reimbursement of the store's costs associated with the
7 collection and remittance of the fee.

8 (2) The development of in-store educational materials for
9 distribution to customers encouraging the use of reusable bags.

10 (3) The development and implementation of an educational
11 campaign encouraging the use of reusable bags, including, but not
12 limited to, public service announcements.

13 (4) Reimbursement of the store's costs associated with providing
14 reusable bags to customers or as donations to community
15 organizations, nonprofit organizations, and other similar entities.

16 (5) Reimbursement of the store's costs associated with the
17 purchase of single-use carryout bags.

18 (e) Any other transaction fee charged by a store in relation to
19 providing a single-use carryout bag shall be identified separately
20 from the Bag Pollution Cleanup Fee.

21 (f) The fee imposed pursuant to this section shall not be charged
22 to either of the following:

23 (1) A customer participating in the California Special
24 Supplemental Food Program for Women, Infants, and Children
25 (Article 2 (commencing with Section 123275) of Chapter 1 of Part
26 2 of Division 106 of the Health and Safety Code).

27 (2) A customer participating in the State Department of Social
28 Services Food Stamp Program.

29 SEC. 7. Section 42252.7 is added to the Public Resources Code,
30 to read:

31 42252.7. (a) The Bag Pollution Fund is hereby established in
32 the State Treasury. All fees collected by the State Board of
33 Equalization pursuant to this chapter shall be deposited in the fund.
34 By January 31, 2011, and quarterly thereafter, a store that collects
35 the Bag Pollution Cleanup Fee pursuant to subdivision (a) of
36 Section 42252.5 shall calculate the amount of moneys collected
37 and shall remit the moneys to the State Board of Equalization for
38 deposit into the Bag Pollution Fund, less funds retained by the
39 store pursuant to subdivision (c) of Section 42252.5.

1 (b) The moneys in the Bag Pollution Fund shall be expended
2 by the board, upon appropriation by the Legislature, for the
3 following purposes:

4 (1) The board shall expend no more than 3 percent of the
5 revenue deposited into the Bag Pollution Fund for reimbursement
6 of the board's costs for administration, collection, enforcement,
7 and auditing requirements associated with this chapter, as well as
8 making refunds associated with the chapter.

9 (2) The board shall, in consultation with the California
10 Environmental Protection Agency, the State Water Resources
11 Control Board, and the Department of Toxic Substances Control,
12 expend no more than 5 percent of the revenue deposited into the
13 Bag Pollution Fund to develop and implement programs related
14 to the use of single-use carryout bags to encourage and support
15 pollution prevention, abatement and cleanup, enforcement, green
16 chemistry, water quality protection and cleanup, and environmental
17 and public education and outreach.

18 (3) The board shall expend the remaining moneys for payments
19 to counties and cities, on a per capita basis, for the following
20 activities to prevent and reduce the litter and environmental impacts
21 of single-use carryout bags:

22 (A) To establish and maintain local programs, including those
23 in partnership with nonprofit community-based organizations, for
24 purposes of litter cleanup activities, source reduction and recycling
25 efforts, educational and litter prevention programs, and other
26 programs to mitigate the environmental impacts of single-use
27 carryout bags.

28 (B) Mitigation projects relating to stormwater pollution,
29 including devices to prevent single-use carryout bag litter from
30 entering storm drain systems.

31 (C) Reusable bag giveaway programs, including those targeting
32 low-income residents.

33 (c) To receive these funds, a city, county, or city and county
34 shall fill out and return a funding request form to the board. The
35 form shall specify the activities to prevent and reduce the litter
36 and environmental impacts of single-use carryout bags for which
37 the funds will be used. Jurisdictions may also jointly fill out a
38 funding request for the purposes of pooling their funds.

39 (d) The board shall annually prepare and distribute a funding
40 request form to each city, county, or city and county. The form

1 shall specify the amount of funds for which the jurisdiction is
2 eligible. The form shall not exceed four double-sided pages in
3 length, and may be submitted electronically. If a city, county, or
4 city and county submits the funding request form and the board
5 deems that the proposed projects meet the funding purposes
6 specified in subdivision (b), the board shall distribute the funds
7 on a per capita basis as defined in subdivision (e). If a city, county,
8 or city and county does not return the funding request form within
9 120 days of receipt of the form from the board, the city, county,
10 or city and county is not eligible to receive the funds for that
11 funding cycle.

12 (e) For the purposes of this section, per capita population shall
13 be based on the total population of the incorporated area of a city
14 and the unincorporated area of a county.

15 (f) The revenues deposited in the Bag Pollution Fund that are
16 generated from the fee imposed pursuant to this chapter shall not
17 be expended for activities unrelated to the prevention or reduction
18 of litter or the environmental impacts of single-use carryout bags.

19 (g) If a city, county, or city and county prohibits the use of all
20 single-use carryout bags, including green carryout bags, and no
21 fees are collected pursuant to Section 42252.5 within that
22 jurisdiction, that city, county, or city and county shall not be
23 eligible for grant funds pursuant to this section.

24 SEC. 8. Section 42253 of the Public Resources Code is
25 amended to read:

26 42253. The manufacturer of a ~~plastic~~ *single-use* carryout bag
27 shall develop educational materials to encourage the reducing,
28 reusing, and recycling ~~plastic~~ *single-use carryout* bags and shall
29 make those materials available to stores required to comply with
30 this chapter.

31 SEC. 9. Section 42254 of the Public Resources Code is
32 amended to read:

33 42254. (a) The Legislature finds and declares that all of these
34 are matters of statewide interest and concern:

35 (1) Requiring a store to collect, transport, or recycle plastic
36 carryout bags.

37 (2) Imposing a plastic carryout bag fee upon a store.

38 (3) Requiring a store to conduct auditing or reporting with regard
39 to plastic carryout bags.

(b) Unless expressly authorized by this chapter, a city, county, or other public agency shall not adopt, implement, or enforce an ordinance, resolution, regulation, or rule to do any of the following:

(1) Require a store that is in compliance with this chapter to collect, transport, or recycle plastic carryout bags.

(2) Impose a ~~plastic~~ *single-use* carryout bag fee upon a store that is in compliance with this chapter.

(3) Require auditing or reporting requirements that are in addition to what is required by subdivision (d) of Section 42252, upon a store that is in compliance with this chapter.

(c) This section does not prohibit the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a city, county, or other public agency, including any action relating to fees for these programs.

(d) This section does not affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

SEC. 10. Section 42256 of the Public Resources Code is repealed.

~~42256. This chapter shall become operative on July 1, 2007.~~

SEC. 11. Section 42256 is added to the Public Resources Code, to read:

42256. On or before January 1, 2012, and biennially thereafter, the board, in coordination with the State Water Resources Control Board, the State Air Resources Board, the regional water quality control boards and stakeholders, shall submit a report to the Legislature regarding the effectiveness of this chapter. The report shall also include recommendations to further encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use carryout bags, including, at a minimum, the following:

(a) Expanding the definition of stores that are subject to this chapter to all other stores and retail establishments distributing single-use carryout bags, including the retail establishments specified pursuant to subdivision (b) of Section 42251.

(b) Increasing the fee imposed pursuant to Section 42252.5 to increase this chapter's effectiveness.

SEC. 12. Section 42257 of the Public Resources Code is repealed.

1 ~~42257. This chapter shall remain in effect only until January~~
2 ~~1, 2013, and as of that date is repealed, unless a later enacted~~
3 ~~statute, that is enacted before January 1, 2013, deletes or extends~~
4 ~~that date.~~

5 SEC. 13. Section 42257 is added to the Public Resources Code,
6 to read:

7 42257. (a) Except as otherwise provided by this chapter, the
8 board shall administer and enforce this chapter.

9 (b) The State Board of Equalization shall administer and collect
10 the Bag Pollution Cleanup Fee pursuant to the Fee Collection
11 Procedures Law (Part 30 (commencing with Section 55001) of
12 Division 2 of the Revenue and Taxation Code).

13 (c) The State Board of Equalization may adopt rules and
14 regulations to carry out this chapter, including, but not limited to,
15 provisions governing collections, reporting, refunds, and appeals.

16 (d) (1) The Bag Pollution Cleanup Fee shall be due and payable
17 quarterly on or before the 25th day of the month following each
18 calendar quarter.

19 (2) Payments shall be accompanied by a form, as prescribed by
20 the State Board of Equalization, including, but not limited to,
21 electronic media.

22 (e) The State Board of Equalization may require the payment
23 of the fee for other than quarterly periods.